

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Frances Bolton	Team: Team # 7	CCRB Case #: 200301995	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 03/05/2003 3:00 PM	Location of Incident: § 87(2)(b)	Precinct: 75	18 Mo. SOL 9/5/2004	EO SOL 9/5/2004	
Date/Time CV Reported Tue, 03/11/2003 9:54 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 03/18/2003 2:45 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. An Officer			
2. POF Nicole Burke	31448	922038	075 PCT
3. LT Daniel Miraglia	00000	913785	075 PCT
4. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Paul Mazzarelli	11693	915139	075 PCT
2. POM Pedro Flores	29131	921347	075 PCT
3. SGT John Mccarthy	89802	898002	075 PCT
4. POF Jacqueline Troy	20079	924571	075 PCT
5. POM Paul Viar	20378	923317	075 PCT
6. POM Keith Arndt	12448	926519	075 PCT
7. POM Edwin Rivera	03848	924393	075 PCT
8. POM Steven Giannitelli	04289	924663	075 PCT
9. POM Albert Gut	24222	922465	075 PCT
10. POM Gregory Murphy	00576	889113	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.LT Daniel Miraglia	Abuse: Lt. Daniel Miraglia authorized the entry into § 87(2)(b) in Brooklyn.	
B.LT Daniel Miraglia	Abuse: Lt. Daniel Miraglia damaged § 87(2)(b)'s property.	
C.LT Daniel Miraglia	Discourtesy: Lt. Daniel Miraglia spoke obscenely and/or rudely to § 87(2)(b)	
D. An Officer	Force: An officer used physical force towards § 87(2)(b)	
E. Officers	Force: Officers used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
F. An Officer	Abuse: An officer threatened § 87(2)(b) with the use of force.	
G.LT Daniel Miraglia	Force: Lt. Daniel Miraglia pointed his/her gun at § 87(2)(b)	
H.LT Daniel Miraglia	Discourtesy: Lt. Daniel Miraglia spoke obscenely and/or rudely to § 87(2)(b)	
I.POF Nicole Burke	Force: PO Nicole Burke used physical force against § 87(2)(b)	
J. Officers	Abuse: Officers searched § 87(2)(b) in Brooklyn.	

## Synopsis

This complaint was filed by § 87(2)(b) a relative of the § 87(2)(b) family who did not witness the incident.

On March 5, 2003, at approximately 3:30 PM, § 87(2)(b) was near § 87(2)(b) in Brooklyn when a fight broke out among some students. Moments later, he saw PO Nicole Burke of the 79<sup>th</sup> Precinct pointing at him. While he was not involved in the fight, § 87(2)(b) became afraid and ran home, and entered § 87(2)(b) a two-dwelling building. PO Burke followed him. She called for assistance, and officers arrived two minutes later. The officers, supervised by Lt. Miraglia, forcibly entered the building, breaking the door. The officers first searched the second floor apartment, and then entered the § 87(2)(b)'s first floor apartment. In addition to § 87(2)(b) his sister, § 87(2)(b) and his mother, § 87(2)(b) were home. § 87(2)(b) stated that Lt. Miraglia told her to "control [her] fucking dog!" § 87(2)(b) and § 87(2)(b) indicated that an officer used force against § 87(2)(b) when removing him from the closet. However, they disagree regarding which officer did so. It is also alleged that officers used force against § 87(2)(b) and that an unidentified officer threatened § 87(2)(b) with the use of force. § 87(2)(b) alleges that Lt. Miraglia pointed his gun at her and subsequently spoke to her discourteously. The family alleged that PO Burke dragged § 87(2)(b) out of the bedroom. Finally, § 87(2)(b) alleged that officers searched the apartment. However, no civilians witnessed that incident.

§ 87(2)(g)

[REDACTED]

## Summary of Complaint

This complaint was filed by § 87(2)(b) with Internal Affairs on March 5, 2003 at 9:55 AM. (Enc. 5A-D) § 87(2)(b) did not witness this incident. After conducting a preliminary

investigation, IAB referred the case to the CCRB as well as to the 75<sup>th</sup> Precinct to ensure proper police procedures were followed.

§ 87(2)(b) § 87(2)(b) s § 87(2)(b)-year old cousin, was interviewed by IAB on March 6, 2003 (Enc. 9A-B). He was interviewed by the CCRB on March 25, 2003. (Enc. 10A-D)

On March 5, 2003, § 87(2)(b) was leaving the handball court at § 87(2)(b) in Brooklyn with his friend § 87(2)(b) when they noticed a fight had started between a group of kids. He was not involved in the fight, but stopped to watch. § 87(2)(b) also saw PO Nicole Burke<sup>2</sup> chasing a couple of kids on Liberty Street. She was with two unidentified uniformed officers.

PO Burke was also talking on her radio. She pointed at a group of kids (it did not include § 87(2)(b) and provided a description of a male with red hair and a blue duffel bag that contained a weapon. § 87(2)(b) had red highlights in his hair and a blue duffel bag, containing a handball and a sweater. He ran away from the location because he was afraid the officers would “beat him up.”

§ 87(2)(b) ran to his apartment, at § 87(2)(b). He ran in through the back door, locking the door behind him. His younger sister, § 87(2)(b) was home, but his mother was not. § 87(2)(b) then entered his mother’s room and hid in the closet. § 87(2)(b) noted that the family pit bull is kept in the bedroom.

§ 87(2)(b) heard feet on the stairs. A few minutes later, § 87(2)(b) heard the door slam, and assumed his mother, § 87(2)(b) came home. A few moments after his mother returned home, § 87(2)(b) heard banging at the door, and § 87(2)(b) asking what was happening. A few moments later, § 87(2)(b) heard a loud noise; it seemed that the door had been kicked in. § 87(2)(b) listened to an officer question § 87(2)(b) about the kid who had run into the apartment; § 87(2)(b) denied that there was anyone there other than her and her daughter, § 87(2)(b). An officer said, “Fuck that. Where the fuck is he?” § 87(2)(b) told the officers that she did not know what they were talking about, and that they should not enter her bedroom because there was a pitbull in the room, but the officers opened the door regardless. § 87(2)(b) entered the room as well. She got under the bed and held the dog. An officer<sup>3</sup> walked in, pulled § 87(2)(b) out of the closet, and “slammed” him on the ground. The dog began barking, and § 87(2)(b) entered the room and tried to help § 87(2)(b) hold the dog. Unidentified officers grabbed § 87(2)(b) and prevented her from helping with the dog.

Several officers, whom § 87(2)(b) could not describe, jumped on § 87(2)(b) and yelled at him to stop resisting. One officer threatened to break § 87(2)(b)’s arm if he continued resisting, but he did not remember which officer did so.

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<sup>1</sup> § 87(2)(b) did not have any contact information for § 87(2)(b)

<sup>2</sup> He knows PO Burke because she is assigned to § 87(2)(b) and he sees her all the time.

<sup>3</sup> In his photo identification, § 87(2)(b) identified PO Keith Arndt as the subject of this allegation, but other witnesses did not corroborate that identification.

After § 87(2)(b) was handcuffed, an officer<sup>4</sup> walked into the bedroom. The dog got away from § 87(2)(b) and bit PO Mazzarelli in the rear. The dog then ran back under the bed.

PO Burke walked in, and verified that § 87(2)(b) was the person she had been chasing.

At the 75<sup>th</sup> Precinct stationhouse, § 87(2)(b) was charged with § 87(2)(b), as well as “the dog bite.” He was released without being brought before a judge. § 87(2)(b) has not been to court about this incident. § 87(2)(b) did not complain of any injuries to the CCRB.

On August 8, 2003, § 87(2)(b) viewed photos of the officers who were present during this incident (Enc. 11A-M). He positively identified PO Keith Arndt as the officer who pulled him out of the closet.

During his IAB interview, § 87(2)(b) stated that he would not be able to identify the officer who pulled him out of the closet. He also made additional allegations that he did not mention during his CCRB interview. When slammed on the ground, one of § 87(2)(b)'s teeth was chipped, and another tooth was dislodged. He further stated that after being pulled out of the closet, the officer who did so placed a gun against the back of his neck, and kned him in the back before kicking him in the side three times. Another officer hit him in the back of the head with a radio.

As § 87(2)(b) was being taken out of the location, he saw an officer dragging § 87(2)(b) into the living room, and heard an officer tell her to “shut the fuck up.”

## **Results of Investigation**

### **Civilian Witnesses**

§ 87(2)(b)

§ 87(2)(b) was interviewed by IAB on March 6 (Enc. 12A-B), and at the CCRB on March 25, 2003. (Enc. 13A-E) She is § 87(2)(b)'s sister.

§ 87(2)(b) was doing homework after school when, at approximately 2:45 PM, § 87(2)(b) told her that he was going to the store to buy some chips. A few minutes later, § 87(2)(b) heard sirens, and her brother knocking on the door. He sounded nervous and out of breath, and told § 87(2)(b) that there had been a fight at the school and there were a lot of police in the area.

§ 87(2)(b) then entered § 87(2)(b)'s bedroom and closed the door behind him. At some point, § 87(2)(b) came home, but § 87(2)(b) did not know exactly when. About ten minutes later, § 87(2)(b) heard police “break down” the front door and run up the stairs. A minute later, they came to her door. She heard the officers at her door, and § 87(2)(b) went to the door, but before she could open it, the door was kicked open. Six officers entered the apartment. One of them<sup>5</sup> pointed his gun at § 87(2)(b) and

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<sup>4</sup> Identified through the investigation as PO Paul Mazzarelli

<sup>5</sup> Identified via description as Lt. Daniel Miraglia.

informed her that someone with a gun had entered the apartment. Lt. Miraglia and another officer<sup>6</sup> told § 87(2)(b) that they needed to search her apartment. § 87(2)(b) attempted to walk into the bedroom to restrain the dog, but the officers refused to allow her to do so. An unidentified officer then kicked in the bedroom door. The dog began barking.

§ 87(2)(b) ran into the room, followed by fifteen to twenty officers. § 87(2)(b) got under the bed and held the dog. An officer<sup>7</sup> found § 87(2)(b) in the closet and pulled him out. Lt. Miraglia drew his gun, and told § 87(2)(b) to “shut the fuck up or [he] would shoot [him].” At that point, another fifteen officers “jumped” on § 87(2)(b). However, § 87(2)(b) was only able to state that one officer held down his arms, and one held down his legs, while Lt. Miraglia handcuffed him. Three or four officers kicked § 87(2)(b) in the ribs, but § 87(2)(b) could not describe those officers. An unidentified officer<sup>8</sup> punched § 87(2)(b) in the mouth, and § 87(2)(b) later learned that the force of the punch broke § 87(2)(b)'s tooth.

§ 87(2)(b) repeatedly asked why he was being arrested, but unidentified officers told him to “shut up, or [they] would shoot [him].” Lt. Miraglia then noticed that § 87(2)(b) was under the bed. He placed the barrel of his gun directly against her forehead, and told her to “get the fuck out” from under the bed. He then told her to “sit the fuck down” or he would shoot her. By this time, § 87(2)(b) had entered the room, and was crying and asking the officers why § 87(2)(b) was being arrested. § 87(2)(b) was crying and wheezing from asthma; Lt. Miraglia and an unidentified officer told § 87(2)(b) to “shut the fuck up and calm the fuck down.” PO Troy then punched § 87(2)(b) in the stomach. PO Burke subsequently grabbed § 87(2)(b) by the hair and dragged her into the kitchen. PO Troy informed her, “See, that’s what you fucking get!”

§ 87(2)(b) ran out of the apartment, and into the backyard. When she walked around to the front of the building, she saw § 87(2)(b) and § 87(2)(b) walking out, handcuffed. A number of officers began cheering and clapping when they were brought out. A few minutes later, officers brought the dog out. He was limp and appeared dead, but an officer told her that the dog had been tranquilized.

When § 87(2)(b) was interviewed by IAB, she stated that an officer had dragged her from the bedroom to the living room, and threw her on the ground next to § 87(2)(b). The front of her body hit the ground, but she stated that she incurred injuries to the back of her head. § 87(2)(b) was unable to explain how she incurred the injuries to the back of her head. An unidentified officer told § 87(2)(b) to “shut the fuck up”.

On August 25, 2003, § 87(2)(b) viewed photos of the officers (Enc. 14A-M) who were present during this incident. She positively identified PO Burke as the officer who dragged her mother by the hair, cursed at her, and slammed her against the wall. She identified PO Troy as the officer who told § 87(2)(b) “don’t fucking worry [about § 87(2)(b)].” § 87(2)(b) stated that PO Arndt cursed at § 87(2)(b) and threatened him with physical force. She further identified Lt. Miraglia as the subject of the allegations enumerated in her CCRB interview statement.

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<sup>6</sup> Identified via description as PO Jacqueline Troy

<sup>7</sup> In a photo identification, § 87(2)(b) stated that Lt. Miraglia pulled § 87(2)(b) out of the closet.

<sup>8</sup> This officer could not be identified based on the description, and § 87(2)(b) did not identify him in a photo identification.

§ 87(2)(b)

§ 87(2)(b) was interviewed by Internal Affairs on March 6, (Enc. 16A-B) and by the CCRB on May 13, 2003. (Enc. 17A-D) § 87(2)(b) is the mother of § 87(2)(b) and § 87(2)(b)

As § 87(2)(b) returned to her house after a doctor's appointment, she saw three to four officers run past her. When she got to her building, there were two officers standing in front of her building. She asked them what was going on, and they informed her that a male had just run into the building and closed the door. He then advised § 87(2)(b) to go to her apartment and close the door.

§ 87(2)(b) did as instructed. She corroborated § 87(2)(b)'s account of the officers entering her apartment, noting that three to four officers entered. After telling the officers that no one besides she and her daughter were in the apartment, the officers began searching in closets and under beds while § 87(2)(b) continued to insist that no one else was in the apartment.

The door to § 87(2)(b)'s bedroom was closed, her pit bull was inside the room. She told the officers not to enter until she had secured the dog<sup>9</sup>, but she was so nervous she could not find the chain. One of the officers kicked the door open, and the officers, along with § 87(2)(b) and § 87(2)(b) entered the room. By this time, there were at least twenty officers in the apartment. Lt. Miraglia<sup>10</sup> yelled at § 87(2)(b) "Control your fucking dog!" He then opened the closet door, moved some clothing aside, and said, "Get out of the closet, motherfucker!" She looked over, it seemed that § 87(2)(b) was sitting or crouching on the closet floor. § 87(2)(b) noted that until that time, she did not realize that § 87(2)(b) was in the bedroom.

Lt. Miraglia crouched down, pointed his gun at § 87(2)(b) and pulled him out of the closet by the leg. Four or five officers grabbed § 87(2)(b) pulled him up, handcuffed him, and placed him on the ground. § 87(2)(b) yelled at the officers not to hurt § 87(2)(b) but did not physically intervene. At this point, § 87(2)(b) was under the bed, trying to hold the dog. An unidentified officer pointed a gun at her head.

Lt. Miraglia then instructed PO Burke to remove § 87(2)(b) from the room. PO Burke grabbed § 87(2)(b) by the back of her jacket, and dragged her along the floor into the kitchen, where she shoved § 87(2)(b) against the wall. § 87(2)(b) attempted to find out what was going on, but PO Burke told her to shut up. PO Troy helped PO Burke handcuff § 87(2)(b) and then walked her out of the building. When she was brought outside, § 87(2)(b) saw that there were at least sixteen police vehicles in front of her building.

§ 87(2)(b) went to § 87(2)(b) for treatment because her head hurt from being pushed into the wall.<sup>11</sup>

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<sup>9</sup> Who bites

<sup>10</sup> Identified through the investigation

<sup>11</sup> A subpoena for medical records was sent to § 87(2)(b), but the medical records division stated that they did not have any record of her visit.

During her IAB interview, § 87(2)(b) stated that an unidentified officer placed his gun against her chest. She further alleged that as a result of being pushed into the wall, she had back injuries, and bruises to the side of her neck.

§ 87(2)(b) viewed photos on August 25, 2003. (Enc. 18A-L) She positively identified PO Burke and Lt. Miraglia as the subjects of the allegations discussed in her CCRB statement.

§ 87(2)(b)

§ 87(2)(b) is a cousin of the § 87(2)(b) family. He was interviewed by IAB on March 6, 2003. (Enc. 19A-B) He was interviewed at the CCRB on August 25, and viewed photos on that date. (Enc. 20A-O)

§ 87(2)(b) stated that he received a call at work<sup>12</sup> from § 87(2)(b)'s neighbors, who told him that the police were at his aunt's house. § 87(2)(b) took a taxi to her house, and got there five to six minutes later. When he arrived, there were numerous officers outside the location.

Because none of the officers were watching the front door, § 87(2)(b) was able to walk into the location. § 87(2)(b) went on to give an extremely detailed account of what he saw inside the building, and made numerous allegations of force and discourteous language against PO Burke, PO Troy, PO Arndt and PO Albert Gut, also assigned to the 75<sup>th</sup> Precinct.

After the officers left the scene, § 87(2)(b) went to the 75 Precinct stationhouse to find out why § 87(2)(b) and § 87(2)(b) had been arrested. § 87(2)(b) was unable to get any information and returned to § 87(2)(b). When he got back, it was clear that the apartment had been searched. The doors were broken, furniture was overturned, the contents of drawers had been dumped out, and a fishtank was broken. § 87(2)(b) immediately took photos of the damage, which he provided to the CCRB. (Enc. XX)

In his IAB interview, § 87(2)(b) stated that he did not enter the building, and watched from outside as officers brought § 87(2)(b) outside in handcuffs. He stated that his cousins subsequently told him what happened inside the building.

§ 87(2)(b)

§ 87(2)(b) is § 87(2)(b)'s mother. She was interviewed at the CCRB on March 25, 2003. (Enc. 15A-C)

§ 87(2)(b) goes to § 87(2)(b)'s apartment every day after she gets out of work. When she arrived, there was a crowd, and numerous police officers outside. § 87(2)(b) spoke to an officer and learned that § 87(2)(b) and § 87(2)(b) had been taken to the 75<sup>th</sup> Precinct. The crowd was yelling at the officers to let § 87(2)(b) and § 87(2)(b) go, and an unidentified officer yelled, "Fuck that!" at the crowd. When § 87(2)(b) entered the apartment, it looked like it had been searched because there was clothing on the floor, and the closets and drawers were opened.

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<sup>12</sup> § 87(2)(b)



### Further Civilian Statements

§ 87(2)(g)

### Officer Interviews

#### PO Nicole Burke

PO Burke was interviewed at the CCRB on May 12, 2003. (Enc. 22A-C) She is assigned to Intermediate School 302.

At approximately 2:45 PM, PO Burke was standing on the corner of Linwood and Liberty Streets with School Safety Officer Dow when SSO Dow received a call with the description of a man with a knife.<sup>13</sup> PO Burke overheard the radio transmission. At the time of the interview, PO Burke did not remember the description provided by SSO Bronson. However, she immediately put the description over the radio. At the time, the area was extremely crowded with students.

A few moments later, a male matching that description<sup>14</sup> walked by PO Burke. She began to follow him, but did not instruct him to stop. As she followed him, she put a call over the radio stating that she was following the male.

As PO Burke walked behind § 87(2)(b) he looked behind him, saw PO Burke, and began to run. PO Burke put another call over saying she was involved in a foot pursuit, and continued following him.

By the time § 87(2)(b) reached § 87(2)(b) entered, and closed the door behind him, PO Burke was about two feet away. About ten seconds later, two police units, one marked and one unmarked, pulled up in front of the building. Lt. Daniel Miraglia, PO Pedro Flores, and PO Paul Mazzairelli were in the unmarked car, PO Burke did not remember who was in the marked car.

PO Burke and two officers went to the rear of the building and checked for § 87(2)(b). A few moments later, officers opened the back door from the inside and PO Burke entered the location. PO Burke, hearing a commotion in a bedroom, entered it. She saw § 87(2)(b) on the floor, handcuffed. There was an unrestrained pit bull in the room, and PO Mazzairelli was attempting to leave. § 87(2)(b) was attempting to pull officers off § 87(2)(b) who did not seem to be resisting the officers. PO Burke stated that Lt. Miraglia, PO Flores, PO Mazzairelli, and PO Troy were in the room, but she did not remember what other officers were in there. § 87(2)(b) was crying underneath the bed.

Lt. Miraglia instructed PO Burke and PO Troy to arrest § 87(2)(b). They picked her up and dragged her out of the room. They brought her into the living room, handcuffed her, and walked her outside.

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<sup>13</sup> PO Burke explained that SSO Dow had received this call from SSO Bronson. PO Burke did not receive the call as well because the school safety officers are on a different radio division.

<sup>14</sup> PO Burke identified him as § 87(2)(b).

PO Burke was assigned the arrests for § 87(2)(b) and § 87(2)(b) was charged with § 87(2)(b), and § 87(2)(b) was initially charged with § 87(2)(b). The knife was not recovered from the scene. The D.A.'s office declined to prosecute § 87(2)(b) at the time of her CCRB interview, PO Burke had not appeared in court regarding § 87(2)(b)'s arrest.

PO Burke did not slam § 87(2)(b) into the wall, nor did she speak discourteously to her.

#### Lt. Daniel Miraglia

Lt. Miraglia was interviewed at the CCRB on July 3, 2003. (Enc. 32A-C) He was the Special Operations Lieutenant on the day of the incident.

Lt. Miraglia was the first officer to arrive at the scene after PO Burke put over a 10-85 (call for assistance). When he arrived, he saw PO Burke standing in front of the building; she told him that the suspect had entered the location. Other officers arrived at the scene, and Lt. Miraglia instructed them to secure the perimeter. He then entered the building with PO Gut.

The building appeared to be a one-family dwelling from the outside but contained two apartments. The officers first searched the upstairs apartment, but did not find the suspect. They then went downstairs. Lt. Miraglia noted that he forcibly entered both apartments in the building.

A young female<sup>15</sup> was in the downstairs apartment. She informed Lt. Miraglia that no one else was in the apartment. Lt. Miraglia searched the entire apartment, with the exception of one bedroom, for the suspect. He stated that he looked in closets, under furniture, and other places where a person could hide.

An older female<sup>16</sup> then entered the apartment. Lt. Miraglia informed § 87(2)(b)<sup>17</sup> that he wanted to enter the bedroom; she told him that he could not because there was a violent pit bull in the room, and she was afraid of it. Lt. Miraglia offered to have ESU come to the location and dart the dog, but she then stated she was not afraid of the dog. Lt. Miraglia instructed § 87(2)(b) to put the dog in the bathroom, but she hesitated. Lt. Miraglia immediately called ESU. Given that § 87(2)(b) was standing with her back to the door, Lt. Miraglia suspected that she was hiding someone, or was not afraid of the dog, because she had her back to the open door. Lt. Miraglia heard the dog growling while he spoke with § 87(2)(b). Lt. Miraglia also noticed movement in the closet<sup>18</sup> and thought it might be the armed suspect. He immediately entered the room with PO Gut, PO Flores, PO Mazzarelli, and one or two other officers. As they entered, they grabbed § 87(2)(b) and moved her to the side so they could enter the room. § 87(2)(b) entered the room as well, and got under the bed to hold the dog.

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<sup>15</sup> § 87(2)(b)

<sup>16</sup> § 87(2)(b)

<sup>17</sup> Who was standing in the slightly opened bedroom door.

<sup>18</sup> The door was open.

Lt. Miraglia pulled § 87(2)(b) out of the closet and he and another officer put § 87(2)(b) on the ground. § 87(2)(b) was yelling, and officers<sup>19</sup> pulled her out of the room. He did not instruct officers to do so. After § 87(2)(b) was pulled out of the closet, Lt. Miraglia stood between § 87(2)(b) and the dog while officers attempted to handcuff § 87(2)(b). § 87(2)(b) held his arms rigid at the side, and would not allow the officers to handcuff him. Lt. Miraglia yelled at the officers to get § 87(2)(b) out of the room, because the dog was coming at them. The dog then bit PO Mazzearelli on the rear end. Lt. Miraglia attempted to kick the dog back. Lt. Miraglia didn't point his gun at anyone, did not use discourteous language with anyone, and did not threaten to shoot anyone. He did not kick § 87(2)(b) and did not see any other officers do so.

Lt. Miraglia remained inside the apartment until ESU arrived and darted the dog. While he was in the location, he searched the closet and its immediate area for a knife, but found nothing.

#### PO Paul Mazzearelli and PO Pedro Flores

PO Mazzearelli was interviewed at the CCRB on May 15, 2003. (Enc. 24A-B) PO Flores was interviewed at the CCRB on June 3, 2003. (Enc. 27A-C). PO Flores and PO Mazzearelli were assigned to the Domestic Violence Unit on the day of the incident.

At approximately 2:45 PM, PO Burke put a call for assistance (10-85) over the radio. They responded to the scene, and saw PO Burke standing in front of § 87(2)(b). There were already numerous police vehicles on the scene. When they arrived, they looked in the backyard for the suspect. They then entered the building with Lt. Miraglia. PO Mazzearelli walked in a few moments after PO Flores.

When they walked in, they heard someone yell, "We got him!" They then walked into the room from which the yell originated. When they walked into the room, § 87(2)(b) had already been handcuffed. Neither officer remembered who else was in the room at the time.

PO Mazzearelli and PO Flores stated that the room was quite congested, with the suspect, the officers, § 87(2)(b) and § 87(2)(b). Both officers corroborated Lt. Miraglia's account of their actions. PO Mazzearelli spoke with § 87(2)(b) in Spanish, attempting to get her to calm down. PO Mazzearelli stated that PO Flores searched the closet, although PO Flores denied having done so.

PO Mazzearelli stated that he had only been in the room for about thirty seconds when the dog bit him on his rear right thigh.<sup>20</sup> As soon as the dog bit PO Mazzearelli, he left the room, with PO Flores assisting him. They immediately left the building and called for an ambulance.

PO Mazzearelli was out line of duty for two weeks after this incident, and returned to work on March 17, 2003.<sup>21</sup> When he returned to work, § 87(2)(b) came to the 75<sup>th</sup> Precinct and asked him to write a letter to the Department of Health, so her dog could be released to the family. PO Mazzearelli did so. (Enc. 25)

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<sup>19</sup> Lt. Miraglia didn't know who

<sup>20</sup> While PO Mazzearelli stated that the dog bit him on the rear right thigh, the other officers present stated that the dog bit his right buttock.

<sup>21</sup> This absence is reflected in PO Mazzearelli's memobook entry.

Sgt. John McCarthy and PO Jacqueline Troy

Sgt. McCarthy and PO Troy were interviewed at the CCRB on June 19, 2003. (Enc. 31A-B and 29A-B) Sgt. McCarthy was the patrol supervisor, and PO Troy his operator.

By the time Sgt. McCarthy and PO Troy responded to PO Burke's 10-85, there were numerous officers already at the scene. Sgt. McCarthy stated that he remained outside to ensure that no one attempted to leave the building.

PO Troy entered the building. When she entered the first floor apartment, she heard yelling and struggling towards the back of the apartment.

PO Troy entered the room where § 87(2)(b) was struggling with several officers. He held his arms at his side and refused to be handcuffed. She saw the unsecured dog, and § 87(2)(b) sitting on the bed, screaming at the officers. § 87(2)(b) attempted to get up, and on Lt. Miraglia's instruction, PO Troy and several officers removed her from the room.

PO Troy brought § 87(2)(b) to another room and handcuffed her. She didn't remember if anyone assisted her. PO Troy remained in the apartment with § 87(2)(b) until § 87(2)(b) was removed from the apartment. She then removed § 87(2)(b) from the apartment.

While in the apartment, PO Troy did not use any discourteous language, punch, or hit anyone.

Sgt. McCarthy noted that after this incident, he filed an Unusual Occurrence Report (Enc. XX) because PO Mazzarelli was bit by a dog.

PO Albert Gut

PO Gut was interviewed at the CCRB on November 20, 2003. (Enc. 40A-B) On the day of the incident, he was the operator for Sgt. Ettinger, the conditions sergeant. PO Gut stated that Sgt. Ettinger remained outside, and none of the other officers stated that they saw Sgt. Ettinger inside. He was therefore not interviewed.

When PO Gut and Sgt. Ettinger arrived at the scene, there were already numerous officers there. PO Gut immediately entered the building. He walked into the first floor apartment and saw PO Flores and Lt. Miraglia standing in front of a door. PO Gut heard barking inside.

PO Gut corroborated Lt. Miraglia's account of § 87(2)(b) refusing to open the door and the officers gaining entry into the room.

When the officers entered the room, PO Gut immediately saw the dog under the bed. There was a closed closet door; PO Gut opened it and saw § 87(2)(b) crouching on the floor. He pulled him out of the closet, laid him on the floor, and handcuffed him. § 87(2)(b) offered no resistance and PO Gut did not have to use any force to subdue him. PO Gut did not know what Lt. Miraglia and PO Flores were doing when he handcuffed § 87(2)(b)

After § 87(2)(b) was handcuffed, the dog came out from under the bed and bit PO Mazzarelli on the buttocks. At that time, an unidentified female restrained the dog. At that point, the officers all left the room with § 87(2)(b). PO Gut didn't point his gun, use force, or use discourteous language against anyone while he was at the location.

#### PO Edwin Rivera, PO Steven Gianitelli, and PO Keith Arndt

PO Rivera was interviewed at the CCRB on July 7, 2003. (Enc. 34A-B) PO Giannitelli was interviewed at the CCRB on July 8, 2003. (Enc. 36A-B) PO Keith Arndt was interviewed at the CCRB on July 9, 2003. (Enc. 38A-B) These officers were assigned to sectors in the 75<sup>th</sup> Precinct.

By the time PO Giannitelli and PO Rivera responded to the 10-85, PO Mazzarelli was already being treated for the dog bite. They did not enter the building. When PO Arndt and his partner, PO Paul Viar, arrived at the scene, there were already numerous units there, so they did not enter the building. As per Sgt. McCarthy's instructions, they transported § 87(2)(b) to the 75<sup>th</sup> Precinct.

#### Police Documents

The Sprint Report (Enc. 41A-G) indicates that PO Burke put a call over the radio with a description of § 87(2)(b) and noted that he had a knife. This description stated that § 87(2)(b) was wearing a black jacket and had braided hair. One minute after that initial call, PO Burke put an unspecified call for assistance (10-85) over the radio. Two minutes after the initial call came over, Lt. Miraglia and Sgt. McCarthy put calls over for ESU to respond to § 87(2)(b) in order to safeguard the building. The next call, one minute later, indicated that officers needed ESU at the scene to contain the dog. Two minutes after that call came over, a call came over stating that an officer had been bit by a dog. This last call came over seven minutes after PO Burke's first call regarding § 87(2)(b).

The command log entry (Enc. 42A-B) indicates that § 87(2)(b) and § 87(2)(b) were both brought to the 75<sup>th</sup> Precinct in apparently normal condition. PO Burke was assigned both of these arrests. § 87(2)(b) was initially charged with § 87(2)(a) 160.50. He was later additionally charged with § 87(2)(a) 160.50. The records on § 87(2)(b)'s arrest were sealed.

§ 87(2)(b) was initially charged with § 87(2)(a) 160.50. The Omniform Arrest report (Enc. 50A-B) indicates that she was later charged with § 87(2)(a) 160.50. The narrative section on these reports indicate that § 87(2)(b) received these charges because § 87(2)(a) 160.50. [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

In addition to numerous documents regarding his injury (Enc. 45, 47, and 48) PO Mazzarelli filed a city-involved accident report (Enc. 46). In that report he noted that he was in hot pursuit of a wanted felon<sup>22</sup> when § 87(2)(b) entered § 87(2)(b). When officers forcibly entered the location, three doors were damaged.

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<sup>22</sup> § 87(2)(b)

The ESU report (Enc. 52) indicates that officers responded to a 10-13 (urgent call for assistance) to assist in securing the location and searching for § 87(2)(b). While ESU was on the scene, PO Mazzairelli was bit by the dog, and ESU officers tranquilized the dog and brought it to the Center for Animal Care and Control. A dog bite report (Enc. 44) was filed. § 87(2)(b) received a summons (Enc. 54) from the Department of Health for not having up to date immunizations. She was further ordered, as a condition for the return of the dog, to keep the dog muzzled when in public, and to have it neutered. (Enc. 55)

### **Complainant Criminal Conviction History**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Substantiated CCRB allegations**

Neither Lt. Miraglia nor PO Burke have any substantiated CCRB allegations.

### **Conclusions and Recommendations**

#### **Civilian Credibility Assessment**

The civilians interviewed in connection with this case all gave statements to IAB as well as the CCRB. § 87(2)(g)

§ 87(2)(b) allegations

#### **IAB Statement**

An officer grabbed § 87(2)(b) by the neck, threw him on ground (dislodging and chipping tooth) and put a gun to his head.  
An officer kned § 87(2)(b) in the back.  
An officer kicked § 87(2)(b) three times.  
An officer hit § 87(2)(b) on the back of the head with a department radio.  
An officer dragged § 87(2)(b) into the living room.  
A female officer pointed gun at § 87(2)(b) and told her to “Shut the fuck up.”  
An officer told § 87(2)(b) to “shut the fuck up.”

#### **CCRB statement**

PO Arndt pulled § 87(2)(b) from the closet and slammed him on ground.  
Officers jumped on § 87(2)(b)  
An officer threatened to break § 87(2)(b)'s arm.

§ 87(2)(b) allegations

#### **IAB statement**

Officers forcibly entered § 87(2)(b)

An officer grabbed § 87(2)(b)'s hair and dragged her.<sup>23</sup>  
An officer put gun against § 87(2)(b)'s head.

#### CCRB Statement

Officers forcibly entered § 87(2)(b)  
Lt. Miraglia drew gun.  
PO Arndt cursed at § 87(2)(b) in bedroom, and told him that he would shoot him or break his arm.  
Lt. Miraglia pulled § 87(2)(b) out of closet, twisted his arm, and handcuffed him.  
Lt. Miraglia told § 87(2)(b) to “shut the fuck up or [he] would shoot [him].”  
Lt. Miraglia told § 87(2)(b) to get the fuck out from under the bed.  
Three to four officers kicked § 87(2)(b) in the ribs.  
Lt. Miraglia pointed his gun at § 87(2)(b)  
Lt. Miraglia spoke discourteously to § 87(2)(b)  
Lt. Miraglia threatened to shoot § 87(2)(b)  
Lt. Miraglia spoke discourteously to § 87(2)(b)  
PO Troy punched § 87(2)(b)  
PO Burke dragged § 87(2)(b) by the hair.

§ 87(2)(b)

#### IAB Statement

An unidentified officer pointed his gun at § 87(2)(b)'s chest.  
An unidentified officer told § 87(2)(b) to get the fuck out of the room.  
A male officer dragged § 87(2)(b) out of the room  
§ 87(2)(b) stated that she was thrown face first against a wall.  
§ 87(2)(b) was thrown into the car doorframe, causing bump on her head.

#### CCRB Statement

Officers forcibly entered § 87(2)(b)  
Officers searched § 87(2)(b)  
An officer told § 87(2)(b) “Control your fucking dog!”  
An officer said to § 87(2)(b) “get out of the closet, motherfucker.”  
Lt. Miraglia pulled § 87(2)(b) out of the closet by the leg.  
An officer pointed his gun at § 87(2)(b)  
PO Burke dragged § 87(2)(b) out of the room by the back of her jacket and shoved her against the wall.  
PO Burke told § 87(2)(b) to “shut up.”

§ 87(2)(b)

#### IAB Statement

§ 87(2)(b) told IAB investigators that he was not present during this incident, but arrived after § 87(2)(b) and § 87(2)(b) had already been handcuffed.

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<sup>23</sup> § 87(2)(g)

### CCRB Statement

§ 87(2)(b) claimed that he was inside the building, and made numerous allegations against officers.

§ 87(2)(g)

§ 87(2)(g)

### Determination of Fact

§ 87(2)(g)

§ 87(2)(b) The investigation determined that PO Burke attempted to stop § 87(2)(b) because he had a weapon, but he fled. This led to a foot pursuit, and officers forcibly entered § 87(2)(b) in pursuit of § 87(2)(b) PO Burke followed § 87(2)(b) to § 87(2)(b) and was approximately two feet behind him when he entered the building and closed the door behind him. She did not immediately follow him into the building, and was unable to identify which one of the two apartments in the building he entered. The investigation further determined that officers found § 87(2)(b) hiding in a closet, and forcibly removed him from it. The investigation determined that PO Burke and PO Troy forcibly removed § 87(2)(b) from the room prior to handcuffing her. § 87(2)(b) § 87(2)(b) and § 87(2)(b) all stated that an officer pointed his gun, although they each gave a different account of which of them was the victim of this allegation, and which officer did so. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)



**Allegation A, Abuse of Authority: Lt. Daniel Miraglia forcibly entered § 87(2)(b) in Brooklyn.**

§ 87(2)(g)

PO Burke stated that she received information from a school safety officer regarding § 87(2)(b). According to Kamins' *New York Search and Seizure Law*, an officer has probable cause if s/he acts on information from another officer which itself or with other information constitutes probable cause. § 87(2)(g)

PO Burke received information from a school safety officer<sup>24</sup> that a male with a knife was in the vicinity of the school.

PO Burke responded to this information by walking after § 87(2)(b). She did not give him any instructions to stop walking, and did not make any attempts to forcibly detain him. Both PO Burke and § 87(2)(b) agree that § 87(2)(b) then fled to his house, closing the door behind him.

§ 87(2)(g)

Kamins' *New York Search and Seizure Law* holds that when there is an indication that criminal activity is afoot, flight can be an important factor in deciding if there is probable cause for an arrest. If there is independent evidence of criminal activity in addition to flight, then probable cause is established.

§ 87(2)(g)

§ 87(2)(g)

According to Kamins' *New York Search and Seizure Law*, the doctrine of hot pursuit holds that a suspect may not evade an otherwise proper arrest by escaping into his or her residence. Officers may enter that residence, even forcibly, in order to effect that arrest. However, should the officers delay their entry into the residence, the hot pursuit doctrine no longer holds, and the officers must have an exigent circumstance in order to enter the residence.

§ 87(2)(b)

the Sprint report indicates that only two minutes elapsed between the time PO Burke put a call over and the time officers at the scene called for ESU. Seven minutes after PO Burke put the call over the radio, § 87(2)(b)

<sup>24</sup> While a school safety officer is not, strictly speaking, a police officer, they have law enforcement status in the public school system. § 87(2)(g)

§ 87(2)(b) and § 87(2)(b) were placed under arrest. § 87(2)(g)

However, because PO Burke did not follow § 87(2)(b) into the building, which appeared to be a two-story house from the outside, she did not know into which of the two dwellings inside § 87(2)(b) § 87(2)(b) ran. Furthermore, § 87(2)(b) is a one family house that appears to have been informally converted to a two-family house. From the outside of the building, there is no indication that the building is not itself a residence. Furthermore, it is not immediately obvious upon entering the building that it is, in fact, a two-family residence.

§ 87(2)(g)

§ 87(2)(g)

**Allegation B, Abuse of Authority: Lt. Daniel Miraglia damaged § 87(2)(b)'s property.**

The apartment doors were damaged when Lt. Miraglia entered the apartment. § 87(2)(g)

**Allegation C, Discourtesy: Lt. Daniel Miraglia spoke discourteously to § 87(2)(b)**

**Allegation H, Discourtesy: Lt. Miraglia spoke discourteously to § 87(2)(b)**

§ 87(2)(b) alleges that Lt. Miraglia yelled at her to “Control [her] fucking dog!” § 87(2)(b) stated that Lt. Miraglia told her to “get the fuck out from under the bed” and “sit the fuck down.” Lt. Miraglia denied using this language during the encounter. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) § 87(2)(b) § 87(2)(b) and Lt. Miraglia all testified to the presence of the growling and barking pit bull. Furthermore, Lt. Miraglia had reason to believe that there was an armed suspect inside the apartment. In particular, at the time Lt. Miraglia used strong language towards § 87(2)(b) he was in a small room with numerous officers, a potentially armed suspect, and a dog (who, moments later, bit an officer).

*PD v. Diesso* (OATH Index 449/90 [January 12, 1990]) holds that “there are times when strong language is appropriate, even necessary, to gain compliance with an order...In addition, the propriety of words must be judged with regard to the ‘mores of the community [and] the realities of life in New York City.’”

§ 87(2)(g)

**Allegation D, Force: An officer used physical force against § 87(2)(b)**

This allegation addresses the claim that an officer forcibly removed § 87(2)(b) from the bedroom closet. In a photo identification, § 87(2)(b) identified PO Keith Arndt as the subject of this allegation. However, PO Arndt testified that he did not enter the building, and no other officers stated that he was inside. PO Gut and Lt. Miraglia both testified that they<sup>25</sup> brought § 87(2)(b) out of the closet. § 87(2)(g)

**Allegation E, Force: Officers used force against § 87(2)(b)**

§ 87(2)(b) told the CCRB that a number of officers “jumped” him. He told IAB that officers kicked and punched him. § 87(2)(b) and § 87(2)(b) gave accounts of this incident that were substantively different; § 87(2)(b) stated that several officers kicked § 87(2)(b) and § 87(2)(b) stated that several officers put § 87(2)(b) on the ground, but did not use other force against him. § 87(2)(g)

**Allegation F, Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.**

While § 87(2)(b) stated that an officer threatened to break his arm, he was unable to describe the officer or identify him in a photo identification. § 87(2)(g)

**Allegation G, Force: Lt. Daniel Miraglia pointed his gun at § 87(2)(b)**

Both § 87(2)(b) and § 87(2)(b) made this allegation, while Lt. Miraglia denied having done so. At the time this incident allegedly took place, § 87(2)(b) was holding the dog.

There are no Patrol Guide procedures that state when an officer may draw or point a gun. *PD v. Gliner* (OATH Index No. 955/00) provides explicit guidelines concerning the drawing and/or pointing of a weapon. According to this case, the PD policy holds that an officer may draw or point his weapon if he has a reasonable fear for his or another’s safety, and that determination must be made given the totality of the circumstances. *PD v. Gliner* further notes that no distinction ought to be made between drawing and pointing a weapon.

<sup>25</sup> Each without assistance from the other.

At the time Lt. Miraglia pointed his gun at § 87(2)(b) he and the other officers had just entered an apartment where there was an apparently vicious dog and possibly an armed suspect. Furthermore, § 87(2)(b) was holding onto the dog. § 87(2)(g)

Furthermore, while Lt. Miraglia denied drawing and pointing his gun, he noted that other officers had, in fact, pointed their guns at the dog when it began to escape from § 87(2)(b) § 87(2)(g)

§ 87(2)(g)

#### **Allegation I, Force: PO Nicole Burke used physical force against § 87(2)(b)**

It is not in dispute that § 87(2)(b) was in the bedroom when the officers were trying to arrest § 87(2)(b) § 87(2)(b) further admits that she was yelling at the officers, and that she owned the dog that subsequently bit PO Mazzairelli.

§ 87(2)(b) and PO Burke both testified that PO Burke dragged § 87(2)(b) out of the room. § 87(2)(b) alleged that PO Burke slammed her against the wall before handcuffing her. PO Burke denied doing so. § 87(2)(g)

§ 87(2)(g)

#### **Allegation J, Abuse of Authority: Officers searched § 87(2)(b)**

§ 87(2)(b) claimed that when he entered the building, it was evident that the § 87(2)(b)'s apartment had been searched. He also provided photos of the aftermath of the alleged search. These photos indicated that furniture had been turned over, and drawers had been emptied. However, no civilians were present during this search, and none of the officers admitted to searching the location. § 87(2)(g)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: